

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jay A. Brunner,

Complainant,

vs.

ORDER FINDING
PROBABLE CAUSE

House Republican Campaign
Committee,

Respondent.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Kathleen D. Sheehy at 10:00 a.m. on October 22, 2004, to consider a complaint filed by Jay Brunner on October 20, 2004. The hearing was held by telephone.

Jay A. Brunner, 30 Oakridge Drive, Birchwood, MN 55110, appeared on his own behalf.

Jeff Johnson, Chair, House Republican Campaign Committee, 161 St. Anthony Avenue, Suite 950, St. Paul, MN 55103, appeared on behalf of the HRCC. Jeanne Danaher, 463 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, also participated in the hearing for the HRCC.

Based on the record in this matter and for the reasons set out in the attached Memorandum, the Administrative Law Judge concludes that there is probable cause to believe that the Respondent violated Minn. Stat. § 211B.06 by making a false statement in a piece of campaign material concerning Rebecca Otto, an incumbent legislator running for re-election in House District 52B. Therefore, the Administrative Law Judge issues the following:

ORDER

1. That there is probable cause to believe that the HRCC violated Minn. Stat. § 211B.06 by making a knowingly false statement in campaign material; and

2. This matter is referred to the Chief Administrative Law Judge for assignment of a three-judge panel to conduct an evidentiary hearing.

Dated: October 25, 2004

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

In 2003, Shawn Otto acted as the manager of his wife Rebecca Otto's campaign in a special election for a seat in the Minnesota House of Representatives, District 52B. In May of 2003, after Rebecca Otto won the election, Shawn Otto made a presentation to the DFL Education Foundation called "Marketing Progressive Politics in the Suburbs." In it, he discussed the negative perceptions a typical suburban voter might have of the DFL and Republican parties. One of his themes was that the DFL could increase its appeal to moderate, Republican-leaning voters in suburban areas by redefining issues and avoiding extreme positions.

The mailing that is the subject of the complaint is a piece of literature concerning Rebecca Otto. The mailing is a four-page color brochure that was mailed to approximately 6,500 households by the HRCC. It contains three large photographs of Rebecca Otto. The text of the mailing provides in relevant part:

Rebecca Otto says she's the candidate of
"balance and reason"
You be the judge.

In 2003, Rebecca Otto won a controversial
special election in which she was indicted
for unfair campaign practices.

Shortly after that, her campaign manager
husband bragged to a group of fellow
Democrats that the way to defeat
Republicans was to "expose the[ir]
hypocrisy and rotten moral core..."

Otto went on to define Republicans as
people in a party . . .

" . . . of intolerance to blacks and some other minorities"

" . . . of tax cuts past the point of responsibility"

" . . . of secrecy and restriction of civil rights"

--*"Marketing Progressive Politics in the Suburbs"* as presented to the DFL Education Foundation on May 1, 2003 by Shawn Otto.^[1]

That's right. Just days after winning a controversial special election, Otto actually said Republicans were *intolerant to blacks*, and that the way to win elections was to "*educate and sow doubt*" about them.

And now, Rebecca Otto is asking for your vote, claiming she is a candidate of "balance and reason." Who is she kidding?

REBECCA OTTO —
SHE'S NOT BALANCED.
SHE'S NOT REASONABLE.
SHE'S NOT ON OUR SIDE.

On November 2, vote NO on Rebecca Otto.^[2]

The Complainant has provided evidence, which the Respondent does not dispute, that all of the material quoted and emphasized in the mailing was taken from the presentation made, not by Rebecca Otto, but by her husband in the presentation referenced above. The Complainant argues that the brochure quotes the material from

the presentation inaccurately and takes it out of context. In response, the HRCC argues that Minn. Stat. § 211B.06 prohibits only false statements, that misleading or confusing statements do not violate the statute, and that nothing in the mailing is either false or misleading.

The Complainant specifically alleges that the following sentence is false because it attributes statements to Rebecca Otto that were in fact made by her husband:

That's right. Just days after winning a controversial special election, Otto actually said Republicans were *intolerant to blacks*, and that the way to win elections was to '*educate and sow doubt*' about them.^[3]

The HRCC contends that the Otto referred to in this sentence is Shawn Otto and that the reference to Otto as the "winner" of the special election does not make the statement false because people commonly refer to spouses, campaign managers, or even campaign volunteers as the "winners" of the elections they support. The only election winner identified in this piece, however, is Rebecca Otto, and the mailing clearly describes her (not her husband) as "not balanced," "not reasonable," and "not on our side" because of the statements that are quoted. There is probable cause to believe that the sentence at issue refers to Rebecca Otto, the winner of the controversial special election. There is no claim that she made the attributed statements.

Accordingly, the Administrative Law Judge concludes that there is probable cause to believe the sentence identified above is a false statement with respect to the political character or acts of a candidate that is designed or tends to injure or defeat a candidate for election to a public office, that was intentionally prepared by a person who knew it was false or communicated it to others with reckless disregard of whether it is false, in violation of Minn. Stat. § 211B.06, subd. 1.

K.D.S.

^[1] In the original, this sentence is in 8 point font, and the rest of the text size ranges from approximately 20-24 point font or larger. As set out above, the italicized quote is 8 point and the text is 20 point.

^[2] Emphasis in original.

^[3] Emphasis in original.